

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

July 21, 2006

10:00 a.m.

Presiding: Marcia I. Jones, President

227 West Jefferson Boulevard

South Bend, Indiana

1. ROLL CALL

Members Present:

Ms. Marcia Jones, President
Mr. Karl King, Vice President
Mr. Greg Downes, Secretary
Mr. Hardie Blake, Jr.
Mr. William Hojnacki

Legal Counsel:

Ms. Cheryl Greene, Esq.
Mr. Shawn Peterson, Esq.

Redevelopment Staff:

Mr. Don Inks, Director
Mrs. Cheryl Phipps, Recording Secretary
Mr. Bill Schalliol, Economic Development Specialist
Mr. Nicholas Witwer, Economic Development Specialist

Others Present:

Ms. Sharon Kendall, Executive Director
Ms. Pam Paluszewski, Legal Dept.
Ms. Jamie Loo, South Bend Tribune
Ms. Sharon Terrell
Mr. Richard Nussbaum II
Mr. Tedd Schaffer, Business Development Corp.
Mr. Richard Deahl, Barnes & Thornburg
Mr. James Masters
Mr. John Quickstad, Blackthorn Golf Course
Mr. Rick Reid, Blackthorn Golf Course
Mr. Geary Leathers, Meadowbrook Golf
Mr. Frank Perri, Holladay Corp.
Mr. Paul Phair, Holladay Corp.
Ms. Glenda Rae Hernandez
Ms. Rita Kopala
Mr. Robert Strzelecki, Lock Joint Tube
Mr. William Henningfeld
Ms. Terri Hupp
Mr. Steve Hupp
Ms. Diana Hess, IUSB
Mr. Paul Meyer, South Bend Clinic
Ms. Meg Hood
Ms. Jennifer Worth
Ms. Sarah Troyer
Mr. Joe St. Peter

South Bend Redevelopment Commission
Regular Meeting - July 21, 2006

1. ROLL CALL (CONT.)

Mr. King noted a Revised Agenda for the July 21, 2006 meeting. The Revised Agenda differs from the original Agenda by the addition of Item 6.C.(2) related to the State Theater as well as a correction to the date of the Next Meeting.

Mr. King made a motion that the Revised Agenda be accepted and approved. Mr. Downes seconded the motion and the Commission approved the Revised Agenda dated July 21, 2006.

COMMISSION APPROVED THE REVISED
AGENDA DATED JULY 21, 2006

2. APPROVAL OF MINUTES

**A. Approval of Minutes of the Rescheduled
Regular Meeting of Friday, June 9, 2006.**

Upon a motion by Mr. King, seconded by Mr. Hojnacki and unanimously carried, the Commission approved the Minutes of the Rescheduled Regular Meeting of Friday, June 9, 2006.

COMMISSION APPROVED THE MINUTES OF THE
RESCHEDULED REGULAR MEETING OF
FRIDAY, JUNE 9, 2006

**A. Approval of Minutes of the Rescheduled
Regular Meeting of Friday, June 23, 2006.**

Upon a motion by Mr. King, seconded by Mr. Hojnacki and unanimously carried, the Commission approved the Minutes of the Rescheduled Regular Meeting of Friday, June 23, 2006.

COMMISSION APPROVED THE MINUTES OF THE
RESCHEDULED REGULAR MEETING OF
FRIDAY, JUNE 23, 2006

3. APPROVAL OF CLAIMS

Redevelopment Commission Claims submitted July 21, 2006 for approval.

305 SBCDA 2003 BOND

Kaser-Spraker Construction
Lehman & Lehman

138,547.62 Parking garage Phase 3
450.00

324 AIRPORT AEDA

Ken Herceg & Associates

5,000.00

South Bend Redevelopment Commission
Regular Meeting –July 21, 2006

3. APPROVAL OF CLAIMS (CONT.)

324 AIRPORT AEDA continued...

City of South Bend	18,158.26
Boswell Golf Design, Inc.	7,800.00
Tri County News	98.80
City Awning	11,013.00
South Bend Tribune	180.66
SBD Reprographics	522.58
Abonmarche Consultants of Indiana, L.L.C.	17,976.00
Owners' association at Blackthorn, Inc.	8,395.77

414 SAMPLE EWING GENERAL

South Bend Water Works	382.33
CFH Landscape Service	2,887.00

420 FUND TIF DISTRICT-SBCDA GENERAL

CB Richard Ellis	721.40
Jerome E. Michaels, MAI	2,000.00
Rose Pest Solutions	87.00
R.E. Pitts & Associates, Inc.	2,400.00
Downtown South Bend, Inc.	10,929.17

422 FUND WEST WASHINGTON

South Bend Heritage Foundation	99,124.30
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428 FUND AIRPORT 2003 BOND

DLZ Indiana Inc	200.00
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\$	<u>326,873.89</u>
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Upon a motion by Mr. Downes, seconded by Mr. King and unanimously carried, the Commission approved the Claims submitted July 21, 2006, and ordered checks to be released.

COMMISSION APPROVED THE CLAIMS
SUBMITTED JULY 21, 2006, AND ORDERED THE
CHECKS TO BE RELEASED

4. COMMUNICATIONS

There were no Communications.

THERE WERE NO COMMUNICATIONS

5. OLD BUSINESS

A. Public Hearing

(1) Public Hearing on Resolution No. 2245 amending the Airport Economic Development Area Development Plan.

Mr. Witwer explained that Resolution No. 2245 will amend the Airport Economic Development Area by adding five properties to the acquisition list. The properties to be added, for the purpose of right-of-way, are located at 4022 W. Cleveland, 2929 Foundation Drive, 3922 Nimtz Pkwy, 1827 N. Bendix Dr. and 1737 N. Bendix Dr.

Mr. Inks noted that the Public Hearing file is complete, containing the (1) Notice of Hearing; (2) a copy of Resolution No. 2245; (3) an affidavit from Carol Smith, Advertising Director of the South Bend Tribune, that the Notice of Hearing was published in that newspaper on July 7, 2006; (4) an affidavit from Richard Andrysiak, Classified Manager of the Tri-County News, that the Notice of Hearing was published in that newspaper on July 7, 2006; (5) a statement from Nicholas Witwer that affected property owners and registered neighborhood associations were notified of the Public Hearing by a memo sent on June 30, 2006; There were 0 written remonstrances received related to Resolution No. 2245.

Ms. Greene noted that under I.C. 36-7-14-17.5, the Commission is not required to have evidence or make findings that were required

5. OLD BUSINESS (CONT.)

A. Public Hearing

1. continued...

for the establishment of the original development area. However, the Commission is required to make the following findings before approving the amendment: (1) The amendment is reasonable and appropriate when considered in relation to the original resolution, plan and purposes of I.C. 36-7-14, and (2) The resolution or plan, with the proposed amendment, conforms to the comprehensive plan for the City. Resolution No. 2245 includes this language and, accordingly, adoption of Resolution No. 2245 by the Commission would satisfy the requirements of the statute. In addition, the Commission is required to consider any written remonstrances that are filed during the filing period specified in the notice.

Ms. Jones opened the Public Hearing for anyone who wished to speak concerning resolution No. 2245. There was no one who wished to speak. Ms. Jones closed the Public Hearing for whatever action the Commission wished to take.

PUBLIC HEARING ON RESOLUTION NO. 2245

(2) Commission approval requested for Resolution No. 2245.

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried the Commission completed Resolution No. 2245 by adding that no written remonstrances were received and approved Resolution No. 2245 amending the Airport Economic Development Area Development Plan.

COMMISSION COMPLETED RESOLUTION NO. 2245 BY ADDING THAT NO WRITTEN REMONSTRANCES WERE RECEIVED AND APPROVED RESOLUTION NO. 2245 AMENDING THE AIRPORT ECONOMIC DEVELOPMENT AREA DEVELOPMENT PLAN

6. NEW BUSINESS

A. Public Hearing

(1) Public Hearing on Resolution No. 2250 expanding the boundaries and amending the Development Plan of the Northeast Neighborhood Development Area.

Mr. Schalliol explained that Resolution No. 2250 amends the boundaries of the Northeast Neighborhood Development Area, creates Expansion Area No. 1, and expands the Northeast Neighborhood Allocation Area No. 1 to have the same boundary. The purpose of the expansion is to add the South Bend Clinic and adjacent property to the development area.

Mr. Inks noted that the Public Hearing file is complete, containing the (1) Notice of Hearing; (2) a copy of Resolution No. 2250; (3) an affidavit from Carol Smith, Advertising Director of the South Bend Tribune, that the Notice of Hearing was published in that newspaper on July 7, 2006; (4) an affidavit from Richard Andrysiak, Classified Manager of the Tri-County News, that the Notice of Hearing was published in that newspaper on July 7, 2006; (5) a statement from Bill Schalliol that affected property owners and registered neighborhood associations were notified of the Public Hearing by a memo sent on July 7, 2006; There were 0 written remonstrances received related to Resolution No. 2250.

Ms. Greene noted that under I.C. 36-7-14-17.5, the Commission is not required to have evidence or make findings that were required for the establishment of the original development area. However, the Commission

6. NEW BUSINESS (CONT.)

A. Public Hearing

1. continued...

is required to make the following findings before approving the amendment: (1) The amendment is reasonable and appropriate when considered in relation to the original resolution, plan and purposes of I.C. 36-7-14, and (2) The resolution or plan, with the proposed amendment, conforms to the comprehensive plan for the City. Resolution No. 2250 includes this language and, accordingly, adoption of Resolution No. 2250 by the Commission would satisfy the requirements of the statute. In addition, the Commission is required to consider any written remonstrances that are filed during the filing period specified in the notice.

Ms. Jones opened the Public Hearing for whoever wished to speak regarding Resolution No. 2250.

PUBLIC HEARING ON RESOLUTION NO. 2250

RICHARD NUSSBAUM II: Attorney, 210 S. Michigan St. I am pleased to be here to speak in favor of this resolution as counsel for the Northeast Neighborhood Revitalization Organization. Approximately three years ago this Commission adopted the plan for the Northeast Neighborhood Development Area. That was a very important step in the process that has taken place with regard to our neighborhood and our organization in that it put down in writing some of the goals and objectives that we were trying to accomplish. One of those was to encourage development of the area. We were pleased to work with the South Bend Clinic in their project which is a

6. NEW BUSINESS (CONT.)

A. Public Hearing

1. continued...

\$35,000,000 expansion project which not only kept South Bend Clinic as a vital presence in the neighborhood, but is also going to expand that presence. We have lots of other things to do within the neighborhood, but this clearly provides us an anchor within our neighborhood in order to continue to make a responsible, reasonable and appropriate contribution to the City of South Bend. And it is in conformity to the plan. We want to thank you for the actions previously undertaken by this Commission in this resolution today, and we encourage you to adopt it. Thank you.

PAUL MEYER: Executive Director, South Bend Clinic, 211 N. Eddy St. I would echo Mr. Nussbaum's comments. We are very supportive of the NNRO and its original principles and we are supportive of the expansion of the development area. We are in the stages of developing and planning out what will literally be a doubling of our facility size: from 100,000 sft of space to 200,000 sft of space. It is a \$35,000,000 project. We are working through various city and governmental agencies on elements of the plan to bring that to fruition. We believe our growth and development is good for the downtown area. We see ourselves as an anchor on the eastern side of the city and we think that the medical care we provide to the residents in this district as well as the surrounding communities, with this expansion will increase access to care and contribute to the quality of life and the health

6. NEW BUSINESS (CONT.)

A. Public Hearing

1. continued...

status of our region. So we appreciate the support of the Commission and speak in favor of the resolution.

There was no one else who wished to speak regarding Resolution No. 2250. Ms. Jones closed the Public Hearing for whatever action the Commission wished to take.

(2) Commission approval requested for Resolution No. 2250.

Upon a motion by Mr. King, seconded by Mr. Hojnacki and unanimously carried, the Commission completed Resolution No. 2250 by adding that no written remonstrances were received and approved Resolution No. 2250 expanding the boundaries and amending the Development Plan of the Northeast Neighborhood Development Area.

COMMISSION COMPLETED RESOLUTION NO. 2250 BY ADDING THAT NO WRITTEN REMONSTRANCES WERE RECEIVED AND APPROVED RESOLUTION NO. 2250 EXPANDING THE BOUNDARIES AND AMENDING THE DEVELOPMENT PLAN OF THE NORTHEAST NEIGHBORHOOD DEVELOPMENT AREA

B. Tax Abatements

(1) Commission approval requested for Resolution No. 2257 approving an application for personal property tax deduction for property located in the Sample-Ewing Development Area. (Lock Joint Tube)

Mr. Schalliol gave the staff report on the project. Resolution No. 2257 approves a personal property tax deduction for Lock Joint Tube, 1215 S. Walnut St.

6. NEW BUSINESS (CONT.)

B. Tax Abatements

1. continued...

The project will invest between \$2.2 and \$3.2 million in the purchase and installation of new manufacturing equipment including, without limitation, milling and fabricating equipment for use in Lock Joint Tube's Walnut Street facility. This equipment will increase the efficiency and accuracy of precision milling and fabrication, as well as reduce the scrap steel in the company's operations. Investment in this new equipment will support the company's ability to cut and fabricate heavier gauge steel with more precision, thereby enhancing the company's position within a competitive market. Total taxes abated during the five-year abatement period range from \$134,451 to \$195,565, depending on the ultimate equipment cost.

Additionally, Lock Joint Tube is located in the Urban Enterprise Zone and may qualify for the Enterprise Zone Investment deduction. This is a new, 10-year deduction which covers 100% of assessed value from new investment, but requires the company to contribute 25% of savings to the Urban Enterprise Association. The department recommends that, should the company receive the UEZ designation, the Tax Abatement designation shall become null and void.

It is not expected that the equipment purchase will create any new jobs; however, it will maintain forty-two existing, permanent

6. NEW BUSINESS (CONT.)

B. Tax Abatements

1. continued...

full-time jobs with an annual payroll of \$1,352,000.

Lock Joint Tube has received four real property tax abatements and six personal property tax abatements since 1992. They are in compliance with all reporting requirements for those abatements. The property is properly zoned for the proposed project. The property is located in the Sample-Ewing Development Area; therefore, a tax abatement must first be approved by the Redevelopment Commission. The project qualifies for five years of personal property tax deduction under the tax abatement ordinance.

Mr. Schalliol noted, again, that Lock Joint Tube is in the Urban Enterprise Zone (UEZ) and could qualify for a new state-authorized UEZ tax abatement as well as the city-sponsored real property abatement due to its location in the Sample-Ewing Development Area. The two areas overlap and there is a potential for “double-dipping.” Going forward, the City intends to take action to prevent “double-dipping.” Lock Joint Tube has helped the City write this legislation and will be the first to be affected by it.

Upon a motion by Mr. Downes, seconded by Mr. Hojnacki and unanimously carried, the Commission approved Resolution No. 2257 approving an application for personal property tax deduction for property located in

COMMISSION APPROVED RESOLUTION No. 2257
APPROVING AN APPLICATION FOR PERSONAL
PROPERTY TAX DEDUCTION FOR PROPERTY
LOCATED IN THE SAMPLE-EWING DEVELOPMENT
AREA. (LOCK JOINT TUBE)

6. NEW BUSINESS (CONT.)

B. Tax Abatements

1. continued...

the Sample-Ewing Development Area. (Lock Joint Tube)

(2) Commission approval requested for Resolution No. 2258 approving an application for real property tax deduction for property located in the Airport Economic Development Area. (Huron Partners)

Mr. Schalliol gave the staff report on the project. He noted that this presentation is in anticipation of the property being added to the Airport Economic Development Area. A later item on the Commission agenda will start the process to expand the AEDA to include this property.

Huron Partners will be constructing a \$5,000,000 development known as the “Huron.” It is a 148,000 sft light industrial building that will house multiple tenants performing a variety of business functions such as a medical supply company, data storage or printing. The building will be constructed using pre-cast concrete panels. It will be the first improvement of the Portage Prairie project, which is expected to generate over \$350 million in private investment. It is extremely important that the first building be successful, as it will provide momentum for the Portage Prairie project, which has an expected build out of 12 to 15 years.

Because of the nature of the building, there aren’t employment projections for the

6. NEW BUSINESS (CONT.)

B. Tax Abatements

2. continued...

project. Huron Partners has not had any previous tax abatements. The property is properly zoned for the proposed use. The property is in the Airport Economic Development Area; therefore the petition must first be approved by the South Bend Redevelopment Commission. The project qualifies for a nine-year real property tax abatement under the tax abatement ordinance.

	Estimated Taxes Over 9 Yrs
Without Abatement	\$1,538,127
With 9 Yr Abatement	\$690,448
Estimated Cost of 9 Yr Abatement	\$847,679

Ms. Greene reiterated that if the Commission desires to approve this abatement as presented, the approval granted would be contingent upon the expansion of the Airport Economic Development Area to include the project area.

Mr. King noted that the City's tax abatement ordinance encourages certain behaviors by companies that apply for tax abatement and evaluates those behaviors on a point scale. This project deserves a mention for scoring very well in its commitment to do things we think are very important: employing local companies, buying materials locally, paying target wage levels, providing employee benefits. We're always looking for new investment to be made, but we're also

6. NEW BUSINESS (CONT.)

B. Tax Abatements

2. continued...

looking to provide other benefits within the community. The company applying for this tax abatement has committed to several of those very important things.

Upon a motion by Mr. Hojnacki, seconded by Mr. Downes and unanimously carried, the Commission approved Resolution No. 2258 approving an application for real property tax deduction for property located in the Airport Economic Development Area. (Huron Partners)

COMMISSION APPROVED RESOLUTION No. 2258
APPROVING AN APPLICATION FOR REAL
PROPERTY TAX DEDUCTION FOR PROPERTY
LOCATED IN THE AIRPORT ECONOMIC
DEVELOPMENT AREA. (HURON PARTNERS)

(3) Commission approval requested for Resolution No. 2259 approving an application for real property tax deduction for property located in the Airport Economic Development Area. (LNW Partners LLP, d/b/a We R Xhibits)

Mr. Schalliol gave the staff report on the project. LNW Partners was formed in 1995 as a real estate holding company. It has purchased the real estate at 4260 Ralph Jones Drive and, in turn, leased it to We R Xhibits, Inc. We R Xhibits is a full service exhibit business that designs and manufactures trade show exhibits. They provide a full line of services from the design and manufacture of exhibits, to trucking the clients' exhibits to their destinations, to setting up and breaking down the exhibits and, finally, storage of the clients' trade show exhibits. The company plans to construct a 13,500 sft addition to the existing 24,000 sft building. The new structure will permit the petitioner to store

6. NEW BUSINESS (CONT.)

B. Tax Abatements

3. continued...

the clients' exhibits as well as allow the firm to expand its manufacturing area. The estimated cost of the addition is \$300,000. The estimated taxes to be abated during the seven year abatement period is \$40,914.

The project is estimated to create two new permanent full-time jobs and one permanent part-time job representing a new annual payroll of \$88,500. The project will also maintain thirteen permanent full-time and one permanent part-time job representing an annual payroll of \$563,500. LNW Partners has had no previous tax abatements. The property is properly zoned for the proposed project. The property is in the Airport Economic Development Area; therefore, the petition for real property tax abatement must first be approved by the South Bend Redevelopment Commission. The project meets the qualifications for a seven-year real property tax abatement under the tax abatement ordinance.

Upon a motion by Mr. Hojnacki, seconded by Mr. Downes and unanimously carried, the Commission approved Resolution No. 2259 approving an application for real property tax deduction for property located in the Airport Economic Development Area. (LNW Partners LLP, d/b/a We R Xhibits)

COMMISSION APPROVED RESOLUTION No. 2259
APPROVING AN APPLICATION FOR REAL
PROPERTY TAX DEDUCTION FOR PROPERTY
LOCATED IN THE AIRPORT ECONOMIC
DEVELOPMENT AREA. (LNW PARTNERS LLP,
D/B/A WE R XHIBITS)

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

- (1) Commission approval requested for proposal for security alarm service in the South Bend Central Development Area. (412 S. Lafayette, former Enzyme Research building)**

Mr. Schalliol noted that Sonitrol Security Alarms has been providing security alarm services for the former Enzyme Research building located at 412 S. Lafayette. The proposal offers either a month-to-month, 6-month, or 12-month service. Staff recommends accepting the proposal for 12 months of service at a cost of \$485 as the best value.

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried, the Commission approved the request for security alarm services in the South Bend Central Development Area and accepted the proposal from Sonitrol Security Alarms for the scope of services and fee proposed.

- (2) Attorney report to Redevelopment Commission and request for authorization to prepare documentation related to the real property located at 212-218 S. Michigan Street in the South Bend Central Development Area.**

Ms. Greene noted that the *South Bend Tribune* recently reported on the proposed sale of the State Theatre. Staff and Legal Counsel have met with the prospective purchaser, Rev. Les Sumrall and his attorney, James Masters, to talk about some of the restrictive covenants that are of record with

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

respect to this property. By way of brief history, the Commission previously owned this property and then sold the State Theatre in 1993 to Watseka Theater Corporation. As the Commission regularly does with its all property transactions, there were certain conditions with respect to Watseka Theater Corporation completing the project as proposed to the Commission prior to the sale, which was the basis by which the Commission approved the sale of the State Theatre. Generally what happens is that the Commission sells property based upon a proposal the developer has presented. Once the purchaser completes development of the property as proposed, the Commission issues a Certificate of Completion stating that the property owner has completed its obligation and releasing any reversionary interest held by the Commission prior to completion of the project. In order to ensure that the development is completed the Commission states in both the Contract for Sale of Land and in the Deed transferring the Commission's interests, that in the event that the purchasers does not complete its development obligation, the Commission can take title of the property back and put the property out for bid again, so that the property ultimately gets developed in accordance with the Commission's development plan for the area. The whole point is to make sure any property that the Commission sells gets developed once it is sold. In this particular case, the reversionary right that the Commission has goes solely to

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

completion of the improvements that the purchaser originally proposed. We have been unable to find any evidence that a Certificate of Completion was issued to Watseka Theater Corp. by the Commission. Staff is therefore requesting that the Commission authorize Legal Counsel to prepare a Certificate of Completion that would then be filed with the Recorder's Office which would affirmatively state that the Commission's reversionary rights on that property have been extinguished.

Second, Ms. Greene noted that she received correspondence from the attorney of the prospective purchaser following their meeting. The letter addresses Sec. 5 of the Deed in which the Commission reserved a façade easement over the west façade in perpetuity and gave certain rights to the owner of the building and reserved rights for the Commission in respect to that façade. In reviewing Sec. 5 of the Deed with respect to that façade easement, it appears there is a typographical error that refers to the "grantor" when the language should have been "grantee." Staff is requesting authorization to clarify and clean up that typographical error with respect to the façade easement.

Ms. Greene then referred back to the Deed transferring the Commission's interest in the property to Watseka Theater Corp. As in many property transactions, there are restrictions and covenants that become of

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

record. For example, in residential housing there may be subdivision restrictions. The property owner would take title to the property subject to those restrictions. Those restrictions are made “of record” at the Recorder’s Office so that when you buy a piece of property you are on notice as to what the restrictions are. In the Deed conveying the Commission’s interest to the Watseka Theater Corp., Sec. 3 lays out some restrictive covenants that the Commission imposed on that real estate. Many of those covenants are fairly standard, having to do with prohibition of discrimination, etc., but because this property is located in the Central Business District, and more specifically within the area the Commission has designated within the SBCDA as its entertainment district, among other things, the Commission reserved certain restrictions as to the use of that property having to do with, for example, a prohibition against adult businesses, a prohibition against a pawn shop, a prohibition against certain types of performing animal exhibitions, etc. One of the other things was any use which would prohibit, pursuant to I.C. 7.1-3-21-11 as the same may be amended from time to time the issuance of an alcoholic beverage permit. In looking at that particular section of the Indiana Code, it has to do with the issuance of a liquor license by the Alcoholic Beverage Commission (ABC). The ABC is prohibited by state statute from issuing a liquor license to a premises if that premises is located within 200 ft of a church or a school. The

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

Commission grappled with this issue recently when it was involved in the relocation of the School Corporation administration building. The School Corporation administration services have been relocated to the former Century Building. The concern at that time was whether that property (i.e. the former Century Building) would become or could be considered a school such that it would prohibit liquor licenses from being issued within 200 feet of the building. If so, those properties located within 200 feet of the new School Administration Building would include the new Gameday project and other areas the Commission has earmarked as entertainment areas. In analyzing the School Corporation project, Legal Counsel was satisfied that the new School Administration Building would not be considered a “school” such that the ABC would be prohibited from issuing a license. It is an administrative facility and, therefore, the Commission’s interests related to its planned entertainment district were not impaired by the School Administration project..

With respect to this purchaser of the State Theater, Legal Counsel has a letter from Mr. Jim Masters, an attorney in South Bend, that references the prospective purchaser of the State Theatre. The letter is dated July 19, 2006. Issue #2 in the letter is “confirmation that the covenant against any use which prohibits the issuance of an alcoholic beverage permit, pursuant to I.C. 7.1-3-21-11 does not prohibit my client’s ownership and

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

use of the building. It is our position that the proposed use is not a “church” as the term is intended in I.C. 7.1-3-21-11 as the building will not be used ‘regularly used for religious worship.’ The fact that a building will be owned by a not-for-profit organization with a religious purpose does not make the use a ‘church.’ Occasional use a place for worship services does not make the building a church under I.C. 7.1-3-21-11. In addition, the owner will sign an agreement that it will not use its ownership of the building as a means to prohibit any property owner within 200 feet from acquiring an alcoholic beverage permit.”

Ms. Greene noted that there is no provision in the alcoholic beverage statute that would permit any type of waiver to the ABC. There is a prohibition against the ABC issuing a liquor permit to a facility within 200 feet of a school or church. The restrictions on the use of the property are “of record.” Ms. Greene noted that she is simply bringing the restrictive covenants to the Commission’s attention. There is no language in the law that would permit a waiver under the ABC, except for premises for grocery or drug store uses. Mitch Heppenheimer, an attorney who deals with this issue in this area confirmed that there is no waiver language for types of facilities.

In summary, Ms. Greene asked for the Commission’s permission to prepare the Certificate of Completion as well as

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

clarification and cleanup to the façade
easement typographical error.

Mr. King noted that Mr. Masters' letter also asks for the Commission's confirmation that the covenant against any use which prohibits the issuance of an alcoholic beverage permit, asking the Commission to give confirmation of that. Are you suggesting

Ms. Greene: Let me just clarify. First of all, specifically, the language is "confirmation that the covenant against any use which prohibits the issuance of an alcoholic beverage permit, pursuant to the statute does not prohibit his ownership and use of the building." I think that's a legal conclusion, but, if the question is whether or not the Commission is trying to stay a proposed sale, it really is business decisions based upon the use the property owner intends to make of the property. They make a determination knowing the restrictions and covenants that are in place as to whether or not their use would be a violation of that.

Mr. King: I understand that. But you've made quite a point of the reasons why those instructions are in the deed. There's mention of this in the proposed purchaser's attorney's letter. You are not asking us to take any action on that, nevertheless it seems an important point that we should note as we authorize you to take these other actions that

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

you've requested permission for. Wouldn't you say?

Ms. Greene: Yes, what it goes to is the fact that...what Mr. Masters has stated here and based upon our meeting with the Reverend and Mr. Masters last week, the property is not going to be used as a church. So, its use is not in violation of that restrictive covenant. So, again, this is simply bringing to the Commission's attention a changed ownership and the questions that came about as the result of our conversations with the prospective purchaser. I think they just wanted to make sure that as they move forward in their transaction that they are comfortable with the direction they are going.

Mr. Hojnacki: I think we want to be in a position where another board, like the ABC, would look at the circumstances and say we have documentation that this is neither a church nor a school and that that was the understanding of both the Commission and purchaser at the time they agreed to this. We just want to make sure the entertainment district is not jeopardized in any way. I think that's what we're trying to do here today.

Ms. Greene: That was the intent of the original covenant---to ensure that your entertainment district remains viable. This is an issue we looked at as it pertained to the School Corporation going into its new facility. It has to do with something beyond

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

the control of the Commission, because it really is a prohibition against the ABC's ability to issue a liquor license based upon uses that are in the area. I bring it to your attention based upon the discussions and letter we've had with the Reverend and Mr. Masters.

Mr. King: You're saying that the covenants in the Deed go with the property and they would cover this. Suppose that three years from now the new purchaser begins to undertake activities that might fit the definition of operating as a church or a school. The ABC decides it's a church or school. Therefore, it will not issue a liquor license to a new restaurant that wants to locate downtown. Other than waiving the Deed in front of the ABC, what would we be able to do so as to not have our plan for an entertainment district be disrupted? What remedies would be available to us?

Ms. Greene: First of all, let's assume that there is no change in the law. Absent any change in the law, you'd do as anybody who sets up a subdivision would do. You'd seek to enforce your restrictive covenants. That may result in going to court and asking the court to enforce those covenants. Covenants are "of record." Any subsequent purchaser of that property would take title of that property subject to those restrictions of record. There's nothing to stop anyone from going to court, but it would require you to go

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

to court to enforce those restrictive covenants.

Ms. Greene: The prohibition with respect to the liquor licenses, let me clarify. If someone who has a liquor license goes in for renewal, existing liquor licenses are grandfathered. However, if you had a new business going in, and it needed to get a new liquor license, the ABC is prohibited from issuing the license if there was a church or school within 200 feet. It wouldn't matter whether the church or school was willing to sign a waiver.

Mr. King: That was exactly my point. There's nothing to be done with the law having to do with liquor licenses. What we would be looking for is the owner's adherence to these covenants saying they would not do anything to that property that would cause us to not be able to get a liquor license issued. What I'm asking is, if they do, what remedy would we have. My understanding is that the remedy would be the filing of a civil suit to require the owner to adhere to the covenants.

Mr. Masters asked to speak and clarify one thing.

Ms. Greene noted that it's the Commission's discretion as to whether it wants to take additional questions or to proceed. If you feel you have enough information, you can proceed.

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

Mr. King: Your answers have been sufficient for me.

Ms. Jones: I'm pretty clear on what the law says.

Mr. Masters: What I wanted to make clear is that we're not stating that there will never be any religious services in that building, because, in fact, there will be. I don't think that meets the definition of what a church is. I don't want you to be left with the impression, a wrong impression, that there will never be an activity there that would be labeled as a religious service. But you may know that Century Center has been used for the conduct of religious services, too. And on a fairly regular basis by some organizations. But that doesn't make Century Center a church either. My client's position is that he will not remonstrate against any liquor license for adjacent properties by saying "we're a church and you can't have a liquor license." But I'm not telling you it won't be used on occasion for what could be considered a religious service.

Ms. Jones: That was clearly stated in this letter.

Ms. Greene: Let me just dovetail on that: Use on an occasional basis does not meet the definition of a church. There's also a definition of a school that would be equally applicable. As long as it's not regularly used for that purpose, that's not an issue.

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

Ms. Greene: My reading of the Alcoholic Beverage statute, at least the way it's currently drafted, there's an absolute prohibition against the ABC issuing that license, irrespective of remonstrances, agreements, or things like that. No matter how agreeable anyone would be, it appears the language of the statute would keep the ABC from issuing a liquor license if that were a church or a school.

Ms. Jones: What I heard Mr. Masters say is that in the area of remonstrance, they would never be called a church, (would never) fulfill that definition that the state defines a church. Not that they are waiving their right to remonstrate, but that they will never become a church.

Mr. Downes: But the concern is that the ABC at some point says they are a church or they are a school.

Ms. Greene: That's correct. Basically, what you look to in the interpretation is whether or not it is being used regularly for that particular purpose. What you have here from Mr. Masters and from the Reverend is that the property is not going to be used such that it would be considered a church. Irrespective of occasional religious services, or occasional classes that would meet there, would not be considered by legal definition to be a church or a school.

6. NEW BUSINESS (CONT.)

C. South Bend Central Development Area

2. continued...

Ms. Jones commented that she believes this has been good discussion and does not want it to be perceived as negative discussion about this project. The Commissioners believe this is a great project and a great opportunity to bring this building back to productive use. She didn't want the discussion about the law to overshadow their enthusiasm for this project.

Mr. King agreed. Making the State Theater into an attractive place and bringing people into the downtown will help us achieve other things we are trying to do in the Central Business District.

Upon a motion by Mr. King, seconded by Mr. Hojnacki the Commission authorized legal counsel to prepare a Certificate of Completion or other confirmation or paperwork as necessary to certify that the former owner of the State Theater complied with all the redevelopment requirements. The Commission also authorized legal counsel to revise the section on façade easement or, if in legal counsel's opinion it would give a better result, to create a separate façade easement that corrects the inadvertent misuse of the term grantor/grantee in the existing façade agreement.

COMMISSION AUTHORIZED LEGAL COUNSEL TO PREPARE A CERTIFICATE OF COMPLETION OR OTHER CONFIRMATION OR PAPERWORK AS NECESSARY TO CERTIFY THAT THE FORMER OWNER OF THE STATE THEATER COMPLIED WITH ALL THE REDEVELOPMENT REQUIREMENTS. THE COMMISSION ALSO AUTHORIZED LEGAL COUNSEL TO REVISE THE SECTION ON FAÇADE EASEMENT OR, IF IN LEGAL COUNSEL'S OPINION IT WOULD GIVE A BETTER RESULT, TO CREATE A SEPARATE FAÇADE EASEMENT THAT CORRECTS THE INADVERTENT MISUSE OF THE TERM GRANTOR/GRANTEE IN THE EXISTING FAÇADE AGREEMENT.

D. Sample-Ewing Development Area

There was no business in the Sample-Ewing Development Area.

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

**(1) Commission approval requested for
Amendment to Blackthorn Golf Course
2006 Budget.**

Mr. Witwer noted that at the May 19 Commission meeting, the Commission approved a contract with Boswell Golf Design to evaluate and design changes to the bunkers and the golf course to repair the state the bunkers are currently in and to ensure that Blackthorn remains the premier course in the area. The consultant's estimate for this project is \$450,000. Only \$100,000 was budgeted in the capital budget for repair of the bunkers. The staff is requesting an increase in the golf course budget of \$350,000 from TIF funds to pay for the renovation. The project would be constructed over a two-year span starting in October 2006 and finishing before the 2007 seasons begins.

At the June 23 Commission meeting, quotes were received for improving the cart paths at the golf course. The bids for that work were \$15,040 over budget. Staff recommends increasing the budget in that line from TIF funds to cover the additional cost.

Mr. Witwer noted that the Blackthorn Joint Committee which consists of members of the Redevelopment Commission and the Airport Authority stated its support of these projects at its July 13 meeting. Staff recommends approving a not-to-exceed amount of \$495,000 for both projects, which includes a contingency for both projects and to authorize the Board of Public Works to

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

1. continued...

administer both contracts.

Mr. Rick Reid, golf professional at Blackthorn Golf Club, noted that Blackthorn Golf Course is in its thirteenth season. The typical life of golf course bunkers is ten to twelve years. Condition of the bunkers is the main complaint he gets about the course. This is maintenance needed to keep Blackthorn at the top of the industry.

John Quickstad, head of maintenance at Blackthorn, stated that Blackthorn has a huge problem with contaminated bunkers and with drainage. They've put together a comprehensive plan to improve the course to be competitive with its competition. The plan calls for decreasing the number of bunkers from 92 to 70 and making those that remain easier to maintain by lowering their face. Following the improvements, Mr. Quickstad anticipates maintenance savings to the course of approximately \$12,000 per year.

Ms. Jones noted that she attended the Blackthorn Joint Committee meeting and agrees that the maintenance needs to be done, especially with the construction of the new County Mayo Hotel expected in 2007. However, she has questions about whether there is a capital plan that budgets for this expense each year in anticipation of the bunkers needing to be renovated after ten years.

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

1. continued...

Mr. Witwer responded that the capital budget is a twenty-year budget, ending in 2022. \$4,000 is allocated annually for bunker renovation. John Quickstad has been doing what he can with that amount each year, but is not keeping up with the deterioration. The design of the course has been deficient in how rain drains through, around and in the bunkers. It has finally gotten to a point where it needs a major renovation.

Ms. Jones noted that the 2006 capital budget included \$100,000 for bunker renovation.

Mr. Witwer responded that the intent was to spend \$100,000 in 2006 and \$150,000 in 2007.

Mr. King asked what was to be the source of those funds.

Mr. Witwer responded that they were to come from TIF funds.

Mr. Inks noted that the Blackthorn Joint Committee, made up of the two co-owners of the Blackthorn Golf Course, the Airport Authority and the Redevelopment Commission, have an interest in the net income from the golf course after the bond payments are made. Each year that joint committee reviews the operating budget for the golf course and the capital requests for the coming year. Those capital requests often cannot be funded wholly from the operating budget. To the extent that they

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

1. continued...

cannot, some of those items, to the extent they are eligible TIF items, we are asked to pick up as part of the TIF budget for the AEDA. There were a few items in the operating budget this year on the capital side which were funded with TIF. The balance of the operating budget is primarily taken up by debt service. To some extent, part of the debt service is paid from TIF. So, while the golf course generates between \$200,000 and \$300,000 for operations, that is consumed by capital and debt service requirements. If there are additional capital and debt service requirements, the TIF helps cover the costs of maintaining that amenity for the Blackthorn industrial and corporate parks. Mr. Inks agrees that the long term capital plan needs to be reviewed and adjusted in light of new estimates for significant items in that capital plan

Mr. King indicated that he is in favor of this world class golf course in our city. He questions, however, the use of TIF funds for what should be a maintenance item. He made a comparison to Century Center and the possibility of its asking for TIF funds for renovation. Century Center maintains a sinking fund into which it puts money for anticipated renovation. He is uneasy about the attitude of Blackthorn Golf Course which assumes TIF is available for what should be operating expenses. Century Center, the Morris/Palais and Blackthorn Golf Course are amenities which bring money into the community. Only Blackthorn Golf Course,

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

1. continued...

apparently, has as part of its business plan to come to the Redevelopment Commission to ask for TIF funds to be used for major repairs and maintenance. He thinks that is wrong. That drains TIF which should be used to create new jobs and tax base. Though it may be a legal use of TIF, it isn't a wise use.

Mr. Inks responded that he didn't know why the bond payments were set up to come from golf course revenues. Bond payments are in excess of \$600,000 annually. If net profits are only \$300,000 you can't cover all of the costs. If you took the debt service out of the golf course and paid that from some other source, such as TIF, then the golf course could establish a fund to pay for long term capital. The view in the past has been that there is only so much money. It's a matter of how you want to see it laid out on paper.

Mr. King indicated that it may make some sense to pay debt service out of TIF in order to demonstrate that this is an industrial development activity. But, he'd mostly like to encourage a management mindset and a business model for this golf course that is aimed at it being self-sustaining instead of taking funds out of a pocket that would otherwise be used to benefit the community by attracting new industry and creating new jobs.

Mr. Downes made a motion to approve the amendment to the 2006 Blackthorn Golf Course Budget in a not-to-exceed amount of

THE AMENDMENT TO THE 2006 BLACKTHORN GOLF COURSE BUDGET WAS NOT APPROVED. STAFF WAS INSTRUCTED TO BRING BACK AN ACCEPTABLE PLAN QUICKLY

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

1. continued...

\$495,000. Mr. Hojnacki seconded the motion. There were two votes aye and three votes nay. The amended budget was not approved.

Mr. Inks asked if the Commission wished to consider the budget items separately so that the cart paths could be completed this year.

Ms. Jones indicated that she would like to see a more well-developed plan of what has to be done now, what could be done in stages, and how can we keep this from happening in the future.

Mr. King indicated that he is not against keeping the golf course in good shape. He wants to see a plan that includes phasing and plans for how to address major maintenance in the future.

Mr. Downes asked if we could have such a revised plan that is acceptable to the Commission and begin construction October 1. Staff was instructed to bring a more acceptable plan back as quickly as possible.

- (2) Filing of Resolution No. 2254 expanding the boundaries of the Airport Economic Development Area, expanding the allocation area for the purpose of tax increment financing and amending the Airport Economic Development Area Development Plan.**

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

2. continued...

Mr. Witwer noted that Resolution No. 2254 expands the boundaries of the Airport Economic Development Area with Expansion Area No. 21 for the southeast portion of Portage Prairie and adds property to the acquisition list. A public hearing is set for August 18, 2006 at 10:00 a.m.

Upon a motion by King, seconded by Mr. Downes and unanimously carried, the Commission accepted for filing Resolution No. 2254 and set a public hearing on Resolution No. 2254 for 10:00 a.m., August 18, 2006.

COMMISSION ACCEPTED FOR FILING
RESOLUTION NO. 2254 AND SET A PUBLIC
HEARING ON RESOLUTION NO. 2254 FOR
10:00 A.M., AUGUST 18, 2006

(3) Commission approval requested for Agreement By and Between the City of South Bend, Indiana, Acting By and Through Its Redevelopment Commission and Waggoner Farms Development, L.P. Portage Prairie Development Phase I.

Mr. Witwer noted that the Commission is asked to approve a development agreement with Waggoner Farms Development, L.P. for development of Phase I of Portage Prairie. The City of South Bend agrees to provide \$108,000 in conduit for the Metronet as well as upgrade a lift station at a cost of \$150,000. The City will also purchase the right of way for and build Dylan Drive at a cost of \$1.65 million. This investment in infrastructure by the Commission will enable the developer to build a 148,000 sft building opening Phase I of Portage Prairie which will have a minimum of 1 million sft of private

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

3. continued...

development costing \$22 million.

Ms. Greene noted that staff has been negotiating the development agreement for some time. The Portage Prairie project is a long term project. We've divided out Phase I which commits the Commission to putting in infrastructure that it intended to do to expand and improve the development area anyway. This will help jumpstart the Portage Prairie project.

Mr. King asked if it wouldn't be wise to consider making Portage Prairie a development area of its own, rather than part of the Airport Economic Development Area. The project area is approximately 600 acres.

Ms. Greene responded that staff is considering creating a separate development area for Portage Prairie, but is not ready to decide that now. We wanted to get going with the construction of Dylan Drive and the other infrastructure improvements. The quickest way to do that was as part of the Airport Economic Development Area.

Mr. Inks noted that taking this small step right now keeps open the option of a separate development area.

Upon a motion by Mr. King, seconded by Mr. Downes and unanimously carried, the Commission approved the Agreement By and Between the City of South Bend, Indiana, Acting By and Through Its Redevelopment

COMMISSION APPROVED THE AGREEMENT BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA, ACTING BY AND THROUGH ITS REDEVELOPMENT COMMISSION AND WAGGONER FARMS DEVELOPMENT, L.P. PORTAGE PRAIRIE DEVELOPMENT PHASE I

6. NEW BUSINESS (CONT.)

E. Airport Economic Development Area

3. continued...

Commission and Waggoner Farms
Development, L.P. Portage Prairie
Development Phase I.

**(4) Commission approval requested for
professional services in the Airport
Economic Development Area. (Survey
services, Portage Prairie)**

Mr. Witwer noted that on June 23, 2006 the
Commission approved a proposal from
Abonmarche. This is a request to add
additional work to that proposal to develop a
legal description for the right-of-way for
Dylan Drive, a right of entry with temporary
right of way for the construction of Dylan
Drive, and a temporary drainage easement.
The cost of the additional services is \$2,400.

Upon a motion by Mr. Hojnacki, seconded
by Mr. Downes and unanimously carried, the
Commission approved the request for
proposal for survey services in the Airport
Economic Development Area and accepted
the proposal from Abonmarche for the scope
of services and fee proposed.

COMMISSION APPROVED THE REQUEST FOR
PROPOSAL FOR SURVEY SERVICES IN THE
AIRPORT ECONOMIC DEVELOPMENT AREA AND
ACCEPTED THE PROPOSAL FROM ABONMARCHE
FOR THE SCOPE OF SERVICES AND FEE PROPOSED

F. South Bend Medical Services District

There was no business in the South Bend Medical
Services District.

G. West Washington-Chapin Development Area

There was no business in the West Washington-
Chapin Development Area.

6. NEW BUSINESS (CONT.)

H. South Side Development Area

There was no business in the South Side Development Area.

I. Northeast Neighborhood Development Area

There was no business in the Northeast Neighborhood Development Area.

J. Douglas Road Economic Development Area

There was no business in the Douglas Road Economic Development Area.

7. PROGRESS REPORTS

Mr. Inks reported that the School Corporation will be moving into its new quarters over the next few weeks. The developer for the County Mayor Hotel is wrapping up some things on its end and expects to make a presentation to the Commission on August 18. And South Bend Heritage will make a presentation at the next Commission meeting on progress of the Natatorium project.

PROGRESS REPORTS

8. NEXT COMMISSION MEETING

The next meeting of the Redevelopment Commission is scheduled for Friday, August 4, 2006 at 10:00 a.m.

NEXT COMMISSION MEETING

South Bend Redevelopment Commission
Regular Meeting –July 21, 2006

9. ADJOURNMENT

There being no further business to come before the Redevelopment Commission, Mr. King made a motion that the meeting be adjourned. Mr. Downes seconded the motion and the meeting was adjourned at 11:33 a.m.

ADJOURNMENT

Donald E. Inks, Director

Marcia I. Jones, President

EXECUTIVE SESSION

July 21, 2006

The South Bend Redevelopment Commission met in Executive Session on Friday, July 21, 2006, at 8:45 a.m. The meeting was held in Room 1200 County-City Building, 227 West Jefferson, South Bend, Indiana, for the purposes specified in I.C. 5-14-1.5-6.1(b)(2)(D). Commissioner's Present: Marcia Jones, President; Karl King, Vice President; Greg Downes, Secretary; Hardie Blake, Bill Hojanaki. Others Present: Sharon Kendall, Executive Director, Community & Economic Development, Don Inks, Director, Economic Development, Attorney Cheryl Greene, Bill Schalliol, Nick Witwer, Pam Paluszewski and Shawn Peterson. The Commission certifies that no topic was discussed other than the subject matter specified in the Public Notice. The Executive Session was adjourned at 10:00 a.m.

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission